

## REMARKS

A Restriction Requirement under 35 U.S.C. §121 was mailed to the Applicant on January 18, 2007 asserting that claims 1-60 are directed to multiple invention species. In response to the Restriction Requirement, the Applicant hereby elects Species Group (i). The Applicant further submits that each of the pending claims 1-60 are readable on the elected species. The Applicant also submits that each of the pending independent claims 1, 30, 31, 37, 45 and 50 are generic to Species Group (i).

The Applicant traverses the Restriction Requirement on the grounds that the indicated Species Group (i) and (ii) are directed to the same device, and therefore constitute a single species of the invention. Specifically, Figure 1 is a perspective view of an intervertebral implant assembly 20 including an expandable body 22 and an expansion member 24, while Figure 2 is a side view of the expandable body 22 in isolation. The expandable body 22 and the expansion member 24 are components of the intervertebral implant assembly 20, and do not constitute separate species of the invention. Accordingly, the Applicant makes the foregoing species election with traverse on the grounds that the species restriction is improper, and respectfully requests reconsideration and withdrawal of the species restriction.

Further consideration of the present application in view of the foregoing elections is respectfully requested.

Respectfully submitted,

By: 

Brad A. Schepers  
Reg. No. 45,431  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
(317) 238-6334 (voice)  
(317) 238-6371 (facsimile)